

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES RIST,

Plaintiff,

14-cv-6503 (ALC) (AJP)

-against-

HSBC SECURITIES (USA) INC.,

Defendant.

**DECLARATION OF DAMIEN J. MARSHALL
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Damien J. Marshall declares, pursuant to 28 U.S.C. § 174, under penalty of perjury, that the following is true and correct:

1. I am a partner of the law firm of Boies, Schiller & Flexner LLP, 575 Lexington Avenue, New York, New York. I am admitted to practice in the State of New York and in this Court. I am submitting this declaration in support of Defendant HSBC Securities (USA) Inc.'s, Motion for Summary Judgment, dated June 12, 2015, in the above-captioned action.
2. Attached as Exhibit 1 is a true and correct copy of Santander's Offer Letter to James N. Rist, dated November 4, 2009, and bearing Bates Numbers HSBCRIST00000049 through HSBCRIST00000055. Some personally identifying information has been redacted.
3. Attached as Exhibit 2 is a true and correct copy of HSBC's Offer Letter to James Rist, dated April 29, 2010, and bearing Bates Numbers HSBCRIST00000025 through HSBCRIST00000030. Some personally identifying information has been redacted.
4. Attached as Exhibit 3 is a true and correct copy of a 2010 Statement of Pay Review for James Rist, bearing Bates Numbers HSBCRIST00003206 through HSBCRIST00003207.

5. Attached as Exhibit 4 is a true and correct copy of HSBC's 2010 Year-End Performance Review for James Rist, dated January 28, 2011, and bearing Bates Numbers HSBCRIST00000003 through HSBCRIST00000005.
6. Attached as Exhibit 5 is a true and correct copy of HSBC's 2011 Mid-Year Performance Review for James Rist, dated August 9, 2011, and bearing Bates Numbers HSBCRIST000000128 through HSBCRIST000000131.
7. Attached as Exhibit 6 is a true and correct copy of a HSBC Global Equity-Sales Matrix PowerPoint presentation, dated September 2011, and bearing Bates Numbers HSBCRIST00028850 through HSBCRIST00028890.
8. Attached as Exhibit 7 is a true and correct copy of an e-mail from [REDACTED] to James Carlone re: "Sales Compliance Review – Org Chart" dated November 15, 2011, with native attachment, and bearing Bates Numbers HSBCDLTDOC-00012424 through HSBCDLTDOC-00012426.
9. Attached as Exhibit 8 is a true and correct copy of a 2011/2012 Pay Review Statement for James Rist, dated February 2012, and bearing Bates Numbers HSBCRIST000003208 through HSBCRIST000003209.
10. Attached as Exhibit 9 is a true and correct copy of HSBC's 2011 Year-End Review for James Rist, dated January 30, 2012, and bearing Bates Numbers HSBCRIST000000006 through HSBCRIST000000010.
11. Attached as Exhibit 10 is a true and correct copy of the New Business Review Committee, Pipeline Submission, dated May 2012, and bearing Bates Numbers HSBCRIST00028831 through HSBCRIST00028835.

12. Attached as Exhibit 11 is a true and correct copy of an e-mail from Ellen Weiss to Ellen Weiss re: fw: [REDACTED] Discussion Documentation dated May 30, 2012, and bearing Bates Numbers HSBCPIC-RIST00001162 through HSBCPIC-RIST00001163.

13. Attached as Exhibit 12 is a true and correct copy of a Written Warning to James Rist from HSBC Securities (USA) Inc., dated June 11, 2012, and bearing Bates Number HSBCRIST00000138.

14. Attached as Exhibit 13 is a true and correct copy of a Motion to Restrain, Pendente Lite in the matter of *Pamela Rist v. James Rist* in Connecticut Superior Court, J.D. of Danbury, dated June 14, 2012. Some personally identifying information has been redacted.

15. Attached as Exhibit 14 is a true and correct copy of Meeting Notes from Jennifer Whang, dated June 28 through July 5, 2012, and bearing Bates Numbers HSBCPIC-RIST00002204 through HSBCPIC-RIST00002206.

16. Attached as Exhibit 15 is a true and correct copy of an e-mail from James Rist to [REDACTED] [REDACTED] re: fw: Another missed biz trip because of my Passport... dated July 5, 2012, and bearing Bates Numbers HSBCRIST00003000 through HSBCRIST00003001. Some personally identifying information has been redacted.

17. Attached as Exhibit 16 is a true and correct copy of an e-mail from Warren McCormick to Michael Picarella re: HF Meetings dated July 20, 2012, and bearing Bates Number Rist001173.

18. Attached as Exhibit 17 is a true and correct copy of an e-mail from Warren McCormick to Margaret Murray re: Weekly Sales Managers Meetings dated July 20, 2012, and bearing Bates Number Rist001172.

19. Attached as Exhibit 18 is a true and correct copy of Meeting Questions/Discussion Notes with Eileen Hedges and Sue Jang, dated July 23, 2012, and bearing Bates Numbers HSBCPIC-RIST00002200 through HSBCPIC-RIST00002201.
20. Attached as Exhibit 19 is a true and correct copy of Discussion Notes with Eileen Hedges and Sue Jang, dated July 24, 2012, and bearing Bates Number HSBCPIC-RIST00002202.
21. Attached as Exhibit 20 is a true and correct copy of an e-mail from Michael Picarella to Ellen Weiss re: Follow-up dated July 26, 2012, and bearing Bates Numbers HSBCPIC-RIST00001030 through HSBCPIC-RIST00001033. Some personally identifying information has been redacted.
22. Attached as Exhibit 21 is a true and correct copy of HSBC organizational charts, dated August 2012, and bearing Bates Numbers HSBCPIC-RIST00000547 through HSBCPIC-RIST00000555.
23. Attached as Exhibit 22 is a true and correct copy of an e-mail from Alexis Zafridis to Allegra Kelly, Carlos Pizzimbono, Christophe Rivoire, Daniel Silber, Gregory Pierce, Jason Henderson, Olivier Rico, Otavio Mendes, Paul Voller, Suzy White, Andre Hubner, Julio Cardenas, Global Equities Announcements re: Consolidation of Americas Equity Derivatives and Equity Finance Institutional Sales teams dated August 21, 2012, and bearing Bates Number HSBCRIST00025294.
24. Attached as Exhibit 23 is a true and correct copy of a Written Warning to Eileen Hedges from HSBC Securities (USA) Inc., dated August 27, 2012, and bearing Bates Number HSBCPIC-RIST00003043.
25. Attached as Exhibit 24 is a true and correct copy of a Motion for Contempt Re Escrow Account, Pendente Lite in the matter of *Pamela Rist v. James Rist* in Connecticut Superior Court,

J.D. of Danbury, dated September 26, 2012, and bearing Bates Numbers HSBCRIST00003363 through HSBCRIST00003365.

26. Attached as Exhibit 25 is a true and correct copy of a Motion for Contempt Re Parenting Time, Pendente Lite in the matter of *Pamela Rist v. James Rist* in Connecticut Superior Court, J.D. of Danbury, dated September 26, 2012, and bearing Bates Numbers HSBCRIST00003369 through HSBCRIST00003372.

27. Attached as Exhibit 26 is a true and correct copy of a Motion for Modification of Parenting Time, Pendente Lite in the matter of *Pamela Rist v. James Rist* in Connecticut Superior Court, J.D. of Danbury, dated September 26, 2012, and bearing Bates Numbers HSBCRIST00003366 through HSBCRIST00003368. Some personally identifying information has been redacted.

28. Attached as Exhibit 27 is a true and correct copy of an e-mail from [REDACTED] to James Rist re: fwd: re: re: dated October 3, 2012, bearing Bates Numbers [REDACTED] 000177 through [REDACTED] 000179. Some personally identifying information has been redacted.

29. Attached as Exhibit 28 is a true and correct copy of an e-mail from James Rist to [REDACTED] [REDACTED] re: fwd: My mid-year review, dated October 15, 2012, with 1 of 2 attachments, and bearing Bates Numbers Rist003088 through Rist003090. Some personally identifying information has been redacted.

30. Attached as Exhibit 29 is a true and correct copy of an e-mail from Karl van Buren to James N. Rist and Paul D. Hamill cc: Rob S. Domanko, Todd Fruhbeis and Warren McCormick re: [REDACTED] dated October 25, 2012, bearing Bates Numbers HSBCRIST00030264 through HSBCRIST00030267.

31. Attached as Exhibit 30 is a true and correct copy of an e-mail from Warren McCormick to Todd Fruhbeis and James R. Rist cc: Tom J. O’Leary and Rob S. Domanko re: [REDACTED] [REDACTED] dated October 28, 2012, and bearing Bates Numbers HSBCRIST00030257 through HSBCRIST00030260.
32. Attached as Exhibit 31 is a true and correct copy of an e-mail from Warren McCormick to Jan A. Wysocki cc: James N. Rist and Todd Fruhbeis [REDACTED], dated November 5, 2012, with attachment omitted, and bearing Bates Numbers HSBCRIST00030276 through HSBCRIST000302798.
33. Attached as Exhibit 32 is a true and correct copy of an e-mail from Todd Fruhbeis to Patrick M. Campion cc: John P. Babcock and Jan A Wysocki bcc: Warren McCormick, James N. Rist and Rob S. Domanko re: Put/Call combo transaction, dated November 9, 2012, and bearing Bates Number HSBCRIST00030268.
34. Attached as Exhibit 33 is a true and correct copy of an e-mail from Warren McCormick to Todd Fruhbeis cc: Paul D. Busby re: “Equity Swaps with Affiliates” dated December 14, 2012, and bearing Bates Numbers HSBCRIST00030238 through HSBCRIST00030243.
35. Attached as Exhibit 34 is a true and correct copy of a 2012/2013 Pay Review Statement for James Rist, and bearing Bates Numbers HSBCRIST00003210 through HSBCRIST00003211.
36. Attached as Exhibit 35 is a true and correct copy of an e-mail from James Rist to Angelina Song Ai Lin, Chew Yin Hong, Dan Judge, Florence Luo Xinghui, Jo-Ann Khor Huey Ming, Liew Chih Wai, Lim Han Hsiung, Rob Domanko, Theodore Langworthy, Wendy Chian Chew Ling Re: “HSBC Notes Program dox” dated January 9, 2013, and bearing Bates Numbers HSBCRIST00024906 through HSBCRIST00024915.

37. Attached as Exhibit 36 is a true and correct copy of an e-mail from Rob Domanko to Ellen Weiss, Jenny Kim Park and Jennifer Whang re: fw: dated January 15, 2013, and bearing Bates Numbers HSBCRIST00004892 through HSBCRIST00004894.

38. Attached as Exhibit 37 is a true and correct copy of an e-mail from Rob Domanko to Ellen Weiss, Jenny Kim Park and Jennifer Whang re: fw: Late today... dated January 15, 2013, and bearing Bates Number HSBCRIST00003302.

39. Attached as Exhibit 38 is a true and correct copy of an e-mail from Paul Hamill to Warren McCormick Re: Rist dated January 17, 2013, and bearing Bates Numbers HSBCRIST00004888 through HSBCRIST00004889.

40. Attached as Exhibit 39 is a true and correct copy of an e-mail from James Rist to Rob Domanko and Warren McCormick re: Guys – I’m not going to make it in today dated February 11, 2013, and bearing Bates Number Rist002208. Some personally identifying information has been redacted.

41. Attached as Exhibit 40 is a true and correct copy of an e-mail from James Rist to Tom OLeary re: Tom – Basically, I need some guidance..., dated February 14, 2013, and bearing Bates Numbers Rist 001248 through Rist 001249.

42. Attached as Exhibit 41 is a true and correct copy of HSBC’s 2012 Year-End Performance Review for James Rist, dated February 26, 2013, and bearing Bates Numbers HSBCRIST00000011 through HSBCRIST00000017.

43. Attached as Exhibit 42 is a true and correct copy of an e-mail from Rob Domanko to Warren McCormick dated March 4, 2013, and bearing Bates Numbers HSBCRIST00003467 through HSBCRIST00003468.

44. Attached as Exhibit 43 is a true and correct copy of an e-mail from Paul Busby to Paul Busby re: Rist – note to file dated March 15, 2013, and bearing Bates Number HSBCRIST00003648.

45. Attached as Exhibit 44 is a true and correct copy of an e-mail from Paul Busby to Paul Busby re: Note To File dated April 3, 2013, and bearing Bates Number HSBCRIST00008815.

46. Attached as Exhibit 45 is a true and correct copy of an e-mail from Warren McCormick to Rob Domanko re: Client conversation dated April 12, 2013, and bearing Bates number HSBCRIST00003734.

47. Attached as Exhibit 46 is a true and correct copy of an e-mail from Rob Domanko to James Rist re: Out today dated May 6, 2013, and bearing Bates Number HSBCRIST00005470.

48. Attached as Exhibit 47 is a true and correct copy of the 2012 Mid-Year review of James Rist, dated August 30, 2012 and bearing Bates Numbers HSBCRIST0003232 through HSBCRIST000327.

49. Attached as Exhibit 48 is a true and correct copy of an e-mail from James Rist to [REDACTED] [REDACTED] re: fwd: Rist v. Rist dated June 5, 2013, and bearing Bates Numbers [REDACTED] 000234 through [REDACTED] 000235. Some personally identifying information has been redacted.

50. Attached as Exhibit 49 is a true and correct copy of an e-mail from Rob Domanko to Rob Domanko re: dated June 14, 2013, and bearing Bates Number HSBCRIST00003162.

51. Attached as Exhibit 50 is a true and correct copy of an e-mail from Paul Busby to Paul Busby re: “Note to file” dated June 21, 2013, bearing Bates Numbers HSBCRIST00028952 through HSBCRIST00028957.

52. Attached as Exhibit 51 is a true and correct copy of an e-mail from Paul Busby to James Rist re: Follow Up dated July 8, 2013, and bearing Bates Numbers Rist001544 through Rist001546.

53. Attached as Exhibit 52 is a true and correct copy of an e-mail from Paul Busby to Paul Busby re: Note to file dated July 22, 2013, and bearing Bates Number HSBCRIST00003814.

54. Attached as Exhibit 53 is a true and correct copy of an e-mail from Warren McCormick to Mark Anson cc: Carl W. Stewart, George A Covo, Louise M. Davies, Patrick N. Brady, Paul D. Busby, Karl van Buren, Tom J. O'Leary, Paul D. Hamill and Todd Fruhbeis re: [REDACTED]

[REDACTED] dated August 1, 2013, and bearing Bates Numbers HSBCRIST00030244 through HSBCRIST00030247.

55. Attached as Exhibit 54 is a true and correct copy of a redacted e-mail from James Rist to J.R. Rothstein, dated August 6, 2013, with 1 of 2 attachments, and bearing Bates Numbers Rist000130 through Rist000132. Some personally identifying information has been redacted.

56. Attached as Exhibit 55 is a true and correct copy of a letter from James Hubbard to the United States Equal Employment Opportunity Commission attaching James Rist's Charge of Discrimination, dated August 8, 2013, and bearing Bates Numbers HSBCRIST00000232 through HSBCRIST00000248. Some personally identifying information has been redacted.

57. Attached as Exhibit 56 is a true and correct copy of an e-mail from Rob Domanko to Ellen Weiss, Todd Fruhbeis and Paul Busby re: fw: HSBC Global Mandatory Training: Overdue learning assignment for James Rist dated August 22, 2013, and bearing Bates Number HSBCRIST00003817.

58. Attached as Exhibit 57 is a true and correct copy of HSBC's 2013 Mid-Year Performance Review of James Rist, dated September 20, 2013, and bearing Bates Numbers HSBCRIST00000132 through HSBCRIST00000137.

59. Attached as Exhibit 66 is a true and correct copy of an e-mail from Delfos Machado to Todd Fruhbeis cc: Agnese M. Amato, James N. Rist, Kevin J. Godfrey, Michael M. Katz, Michael X. Murphy, Patrick N. Brady, Rob S. Domanko, Robert W. Russo, Tachun Kim and Tom J. O'Leary re: [REDACTED] giving us a look on Options biz..., dated December 10, 2013, and bearing Bates Numbers HSBCRIST00030269 through HSBCRIST00030271.

60. Attached as Exhibit 59 is a true and correct copy of a redacted e-mail from James Rist to J.R. Rothstein, James Hubbard dated December 13, 2013, and bearing Bates Numbers Rist000259 through Rist000261. Some personally identifying information has been redacted.

61. Attached as Exhibit 60 is a true and correct copy of a 2013/2014 Pay Review Statement for James Rist bearing Bates Numbers HSBCRIST00003212 through HSBCRIST00003213.

62. Attached as Exhibit 61 is a true and correct copy of an e-mail from Pam Rist to James Rist re: going through paperwork dated February 1, 2014, with attachment, and bearing Bates Numbers HSBCRIST00005578 through HSBCRIST00005579. Some personally identifying information has been redacted.

63. Attached as Exhibit 62 is a true and correct copy of HSBC's 2013 Year-End Performance Review of James Rist, dated February 24, 2014, and bearing Bates Numbers HSBCRIST00000018 through HSBCRIST00000024.

64. Attached as Exhibit 63 is a true and correct copy of HSBC's Employee Complaint and Anti-Retaliation/Whistle Blower Protection Policy, dated April 22, 2014, and bearing Bates Numbers HSBCPIC-RIST00000005 through HSBCPIC-RIST00000007.

65. Attached as Exhibit 64 is a true and correct copy of an e-mail from James Rist to J.R. Rothstein dated May 12, 2014, with attachments, and bearing Bates Numbers Rist000399 through Rist000450. Some personally identifying information has been redacted.
66. Attached as Exhibit 65 is a true and correct copy of Plaintiff's Complaint in this action, dated August 14, 2014.
67. Attached as Exhibit 66 is a true and correct copy of Defendant's Answer to Plaintiff's Complaint in this action, dated November 21, 2014.
68. Attached as Exhibit 67 is a true and correct copy of Plaintiff's Second Amended Complaint in *Picarella v. HSBC Securities (USA), Inc.*, No. 14-cv-4463, dated April 9, 2015.
69. Attached as Exhibit 68 is a true and correct copy of Defendant's Answer to Plaintiff's Complaint in *Picarella v. HSBC Securities (USA), Inc.*, No. 14-cv-4463, dated April 23, 2015.
70. Attached as Exhibit 69 is a true and correct copy of a notice issued by HSBC to James N. Rist, dated November 2010, and bearing Bates Numbers HSBCRIST00030302 through HSBCRIST00030303.
71. Attached as Exhibit 70 is a true and correct copy of HSBC's Statement of Business Principles and Code of Ethics for US Employees, dated December, 2013, and bearing Bates Numbers HSBCPIC-RIST00002174 through HSBCPIC-RIST00002193.
72. Attached as Exhibit 71 is a true and correct copy of the Plaintiff's Response to Defendant's Third Set of Interrogatories in *James Rist v HSBC Securities*, dated April 20, 2015.
73. Attached as Exhibit 72 is a true and correct copy of the Plaintiff's Response to Defendant's First Set of Requests for Admission, dated May 14, 2015.
74. Attached as Exhibit 73 is a true and correct copy of a letter from Marc Susswein to Hon. Andrew Carter re: Response to Pre-Motion Conference, dated May 29, 2015.

75. Attached as Exhibit 74 is a true and correct copy of the FINRA Series 9 and 10 General Securities Sales Supervisor Examination, <http://www.finra.org/industry/series9-10>.
76. Attached as Exhibit 75 is a true and correct copy of relevant excerpts from the deposition transcript of Didier Descamps, dated May 15, 2015.
77. Attached as Exhibit 76 is a true and correct copy of relevant excerpts from the deposition transcript of Robert Domanko, dated May 12, 2015.
78. Attached as Exhibit 77 is a true and correct copy of relevant excerpts from the deposition transcript of Todd Fruhbeis, dated April 24, 2015.
79. Attached as Exhibit 78 is a true and correct copy of relevant excerpts from the deposition transcript of Eileen Hedges, dated May 13, 2015.
80. Attached as Exhibit 79 is a true and correct copy of relevant excerpts from the deposition transcript of Warren McCormick, dated April 30, 2015.
81. Attached as Exhibit 80 is a true and correct copy of relevant excerpts from the deposition transcript of James Rist, dated May 14, 2015.
82. Attached as Exhibit 81 is a true and correct copy of relevant excerpts from the deposition transcript of Ellen Weiss, dated May 11, 2015.
83. Attached as Exhibit 82 is a true and correct copy of relevant excerpts from the deposition transcript of Jennifer Whang, dated April 24, 2015.
84. Attached as Exhibit 83 is a true and correct copy of the declaration of Tom O'Leary, executed June 8, 2015.
85. Attached as Exhibit 84 is a true and correct copy of the declaration of Paul Busby, executed June 9, 2015.

86. Attached as Exhibit 85 is a true and correct copy of the declaration of Patrick George, executed June 11, 2015

87. Attached as Exhibit 86 is a true and correct copy of the declaration of Carlos Pablo Pizzimbono, executed June 11, 2015

88. Attached as Exhibit 87 is a true and correct copy of the declaration of Suzanna White, executed June 12, 2015

Dated: New York, New York
June 12, 2015

A handwritten signature in black ink, appearing to read "Damien Marshall", written over a horizontal line.

Damien J. Marshall
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